

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4387 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAHESHBHAI R PATEL

Versus

PALSANA GRAM PANCHAYAT

Appearance:

MR SANJAY M AMIN for Petitioners

MR AD PADIVAL for Respondent No. 1

MR AJ DESAI ASST GOVERNMENT PLEADER for Respondent No.2,3

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 01/04/97

ORAL JUDGEMENT

1. Heard Learned counsel for the parties.
Petitioner's case is that they were keeping their movable articles for household use adjacent to back wall of their house at village Palsana and they were ordered to remove the same as it was causing obstruction on the street. The same was challenged before the appellate authority

inter alia on the ground that while Panchayat has not taken any action to remove the pucca construction made on the other side of the street by occupants of the house adjacent to that pucca construction, petitioners have been picked up for discriminative treatment for removing the obstruction on the street. The plea found favour with the appellate authority. He quashed the notices and directed the goods removed by panchayat and returned to the petitioners. According to the petitioners, the goods have been returned in pursuance of that order. At this juncture it may also be noticed that in the first instance on 1.1.1993, the appellate committee of Panchayat has granted an injunction against execution of notices, dated 20/24.12.92 for removal of obstruction on the street. According to the petitioners, they have offered certified copy of the order to the officers of Panchayat on 3rd January as well as on 4th January and on 5th of January again when the officers of the Panchayat came to remove the articles, the copy of the interim order was shown to them but inspite of the same, the articles were removed in defiance of the interim order. Considering these facts, the appellate authority also directed the Panchayat to hold enquiry into the conduct of the erring officers.

2. Against the order of the appellate committee dated 21.8.1993, revision was preferred by the Grampanchayat before the Additional Development Commissioner. According to the statement of lawyer of Gram Panchayat recorded by the Additional Development Commissioner, in his order, the appeal of the Panchayat was confined to quashing of notices and there was no appeal against the order directing the enquiry into the conduct of erring officers who have acted contrary to the injunction issued by the appellate committee. By his order dated 25.10.93/27.1.1994, the Additional Commissioner set aside the order of the Committee not only in respect of quashing of notices but also in respect of direction to hold enquiry against the erring officers, by reasoning that as per the record available before him, the injunction order was served by Regd. Post only at 5.00 p.m. on 5.1.1993 but the officers have acted in pursuance to the notice prior to postal delivery. It appears that the Additional Development Commissioner has not taken notice of the fact that though copy of the order by registered post may have reached the office of the Panchayat on 5.1.1993, the petitioners, who had obtained order in their favour from the appellate committee and copy with them had been shown to the officers concerned when they came to execute notices.

3. So far as the question of laying of movable goods on street is concerned, it cannot be doubted that the same causes obstruction of a public way and it cannot be said that the Panchayat, responsible for maintaining the public streets and free from any obstruction, has no authority to cause the obstruction on the public street to be removed. It is trite to say that on every inch of a public way, every member of public has a right to pass and repass as many times as he wishes to and anything which causes obstruction requires to be removed subject to just exceptions concerning temporary needs, for special reasons. From the allegations of the petitioners themselves, it is apparent that while public way was already narrow on account of pucca constructions on the other side of the street, the remaining part of the public street only was available for movement of the people. In these circumstances, it cannot be said that the insistence of the Panchayat on the respondents to keep their articles within their house was in any way unreasonable. Be that as it may, since issuance of notice, the obstruction has been removed and the articles of the petitioners have been returned to them, that part of dispute need not be adjudicated here, suffice it to state that articles returned to the petitioners shall not be recovered back from them, in the guise of the order passed by the Additional Development Commissioner and petitioners cannot claim any right to keep obstruction on public streets.

4. It has been urged by learned counsel for the petitioners that notwithstanding there being no appeal against the order directing enquiry into the conduct of erring officers in connection with breach of injunction order, by any person, the Additional Development Commissioner has interfered with that part of the order as well which is without jurisdiction. So far as the present case is concerned, this contention of the petitioner cannot be upheld, inasmuch as petitioner has not chosen to make those persons as party who are likely to be affected by reversal of that part of the order made by the Additional Development Commissioner.

5. However, it must be clarified that it is of paramount importance in a society governed by rule of law that orders made by adjudicatory bodies while such orders are in force are respected and obeyed by all concerned, more particularly, by authorities engaged in enforcing law. The fact that an interim injunction order or stay order was served later on through formal process by itself cannot absolve the authorities to abide by such orders if the same has been otherwise brought to their

notice and they are made aware of it. If that were not so, the very purpose of issuing injunction orders and stay orders to protect the rights of litigants pending litigation would be frustrated, on the ground the formal service of the order having taken place later through regular process notwithstanding that orders have been brought to the notice of the concerned authorities. Law is trite that an injunction order which is to a party to the litigation take effect from the date when knowledge of that order can be attributed to the person against whom injunction is directed, and ordinarily it may not affect transaction made prior to it, a stay order becomes effective on the date it is passed. Therefore, Additional Development Commissioner, was certainly not justified in taking the question of disobedience of the injunction order issued by the appellate authority lightly, without taking into consideration all relevant material about the time when knowledge of order could be attributed to concerned officer. However, since matter is old one, and the concerned parties in whose favour order has been made by the Additional Development Commissioner is not before this Court, I am not inclined to interfere in the matter.

6. Petition accordingly is dismissed. Rule
discharged. No order as to costs.